

# **EXHIBIT 11**

1           IN THE UNITED STATES DISTRICT COURT  
          FOR THE NORTHERN DISTRICT OF OHIO  
2           EASTERN DIVISION

3       IN RE:   NATIONAL                                 :   HON. DAN A.  
          PRESCRIPTION OPIATE                         :   POLSTER  
4       LITIGATION                                       :   MDL NO. 2804

5 This document relates to: : Case No. 17-MD-2804

6 The County of Summit, Ohio :  
Ohio et al. v. Purdue Pharma :  
7 L.P., et al., Case No. :  
17-OP-45004 :

9 The County of Cuyahoga v. :  
Purdue Pharma Purdue Pharma :  
L.P., et al., Case No. :  
0 18-OP-45090 :

11 - - -  
12 - HIGHLY CONFIDENTIAL -  
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VOLUME I

14 - - -  
May 9, 2019

16 Videotaped deposition of  
CRAIG J. McCANN, Ph.D., CFA, taken  
17 pursuant to notice, was held at the law  
offices of Morgan Lewis & Bockius, LLP,  
18 1111 Pennsylvania Avenue, NW, Washington,  
D.C., beginning at 10:03 a.m., on the  
19 above date, before Michelle L. Gray, a  
Registered Professional Reporter,  
20 Certified Shorthand Reporter, Certified  
Realtime Reporter, and Notary Public.

22 GOLKOW LITIGATION SERVICES  
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1 Q. What do you mean by a  
2 flagged transaction?

3 A. Well, for my purposes it's  
4 just a -- an example we were looking at a  
5 minute ago, a fairly simple, if-then  
6 step. I think of everything I -- I've  
7 done here in terms of what you can do in  
8 Excel. And so imagine that you've got  
9 numbers in two columns and you've got a  
10 rule that says if Column A exceeds  
11 Column B, put a one in that cell. And I  
12 would think of that one as a flag. And  
13 the absence of that one, signifying that  
14 A does not exceed B, being an unflagged  
15 transaction.

16 And then it's only a slight  
17 further modification to say in that third  
18 column, it's a one if A exceeds B or if  
19 the column above -- the value above is  
20 one. And then you would just fill in  
21 ones in every cell after the first time A  
22 exceeds B.

23 And all I mean by flagging  
24 is that it's got that checkmark or one

1 for that transaction and everything that  
2 follows it.

3 Q. Are you of the opinion that  
4 a flagged transaction means that that  
5 transaction represents a suspicious  
6 order?

7 A. That's way beyond my report,  
8 I think.

9 Q. Are you --

10 A. I'm sorry, I apologize. I  
11 don't have an opinion one way or the  
12 other. If -- if you inferred from my  
13 answer that I think it means that it is  
14 not a suspicious order, I didn't mean  
15 that. I just mean I don't have an  
16 opinion one way or the other.

17 Q. Understood. But just to  
18 make sure we are speaking the same  
19 language. It's fair to say that you are  
20 not taking the opinion that a flagged  
21 transaction is necessarily a suspicious  
22 order?

23 A. Correct.

24 Q. And it's also fair to say

1     that you are not saying that a flagged  
2     transaction is necessarily illegal or  
3     representative of illegal conduct?

4             A.     Correct.

5             Q.     It's also fair to say that a  
6     flagged transaction in your opinion does  
7     not necessarily mean there's been a  
8     failure of due diligence?

9             A.     Correct.

10            Q.     I want to take a look real  
11    quick specifically at this first  
12    approach, the maximum monthly trailing  
13    six-month threshold.

14                   And I want to -- your --  
15    your -- strike that.

16                   Your example here is very  
17    helpful for understanding it, so I  
18    appreciate that.

19                   But I want to get an  
20    understanding for, in practical terms,  
21    various of the defendants for different  
22    reasons may have gaps in their data. So  
23    for example, they may have been serving a  
24    pharmacy for a period of time, the

1 pharmacy switched to a different  
2 distributor, and then went back to that  
3 distributor.

4 Are you familiar with those  
5 kinds of changes or variations in the  
6 data, just speaking generally?

7 A. Yes.

8 Q. Okay. How were gaps in the  
9 data or entries without anything included  
10 handled in figuring out the maximum  
11 monthly trailing six-month threshold?

12 A. I'm sorry, I don't think I'm  
13 understanding that question.

14 Q. Sure. So I have a  
15 hypothetical for you. We can try and  
16 walk through it to see if that helps to  
17 clarify.

18 A. Okay.

19 Q. We have a pharmacy  
20 purchasing from a distributor in January  
21 through June, let's say of 2007. I'm  
22 just picking a year. But does not  
23 purchase from that distributor from July  
24 through December of 2007. Okay? So

1           A.     Yes.

2           Q.     Why did you use the word  
3     "excessive" here?

4           A.     Well, you have to read the  
5     title in the context of the four or five  
6     or eight pages that follow. And you can  
7     see in what follows. I report the  
8     shipments per capita, and then a couple  
9     of baselines that the judge or a jury may  
10    find helpful. And excessive is then  
11    defined to just be the difference between  
12    what you observe and those example  
13    thresholds. The modeling allows for  
14    variations in those thresholds, the two  
15    thresholds are just examples that I've  
16    given you. And then I've described the  
17    difference between what was shipped per  
18    capita and those baselines as excessive.

19                I -- I'm not -- I'm not  
20    describing them as excessive in some  
21    epidemiological sense, or -- or legal  
22    sense. I'm just describing it relative  
23    to the benchmarks that I've -- or  
24    baselines that I've described.

1           Q.     Okay. I mean I want to make  
2     sure I understand the use of the word  
3     excessive here. Do you literally mean  
4     that it -- the data exceeds something, so  
5     you're using the word excessive? Is that  
6     what you're referring to?

7           A.     Exactly.

8           Q.     So you're not saying that  
9     you think it's too much in that means of  
10    excessive. You're trying to just say  
11    it's above some threshold you've  
12    identified?

13          A.     Correct.

14          Q.     Okay. So you're not making  
15    a qualitative judgment about the  
16    excessiveness in this section, you are  
17    making a quantitative judgment?

18          A.     I think that's correct.

19          Q.     You are not saying in your  
20    report that excessive means suspicious  
21    for the purposes of suspicious order  
22    monitoring, correct?

23          A.     Correct.

24          Q.     You are not saying that



1 excessive means unlawful in any way,  
2 correct?

3 A. Correct.

4 Q. Let's take a look at  
5 Paragraph 160 which is later on in this  
6 section, right at the end of it, on  
7 Page 88.

8 Do you see that?

9 A. Yes.

10 Q. And toward -- I would say a  
11 little more than halfway down there's a  
12 sentence that starts "the purpose."

13 Do you see that?

14 A. Yes.

15 Q. "The purpose of identifying  
16 transactions -- to determine which  
17 transactions warrant some further due  
18 diligence -- is likely to only be met by  
19 flagging more transactions than those  
20 which are used to fill medically  
21 unnecessary prescriptions. Thus the  
22 decline in opioid use in Ohio and the  
23 implication that more than 70 percent of  
24 opioids shipped into Ohio were excessive

1 supports my identification of  
2 transactions."

3 Did I read that correctly?

4 A. Yes.

5 Q. Now, I want to make sure I  
6 understand what you're saying here.

7 When you are talking about  
8 the purpose of identifying transactions,  
9 is that the same as flagging transactions  
10 like we've discussed today?

11 A. Yes.

12 Q. And you are now saying that  
13 means to determine which transactions  
14 warrant some further due diligence.

15 Do you see that?

16 A. Yes.

17 Q. And is that coming from you  
18 or is that coming from plaintiffs'  
19 counsel, that the flagging means that  
20 those transactions warrant some further  
21 due diligence?

22 A. I'm not sure. Maybe a  
23 mixture of both. But I'm -- I'm just  
24 trying to provide some context. My

1 would be appropriate or where we wrote a  
2 zero when an N/A would be appropriate.

3 But looking at this example  
4 you've pointed me to, that would be the  
5 interpretation that I would take from it.

6 Q. Now, Dr. McCann, have you  
7 ever heard the term "diversion" used in  
8 connection with prescription opioids?

9 A. Yes.

10 Q. What does diversion mean to  
11 you?

12 A. I only have the very vaguest  
13 of kind of layman's understanding of that  
14 term. I don't -- I don't have an  
15 understanding that would be helpful here,  
16 I don't think. I'm happy to tell you  
17 what it is, but I'm not sure that it's  
18 helpful.

19 Q. Yeah, please.

20 A. Sure. So I would just say  
21 it sounds like it's related to diverted  
22 and that diversion means that some drugs,  
23 some prescription drugs were diverted  
24 from their intended use, or from their

1 legitimate intended uses to illicit  
2 activities.

3 Q. Do you agree that diversion  
4 is a crime?

5 A. I have no -- no opinion --

6 MR. MOUGEY: Objection.

7 Outside the scope.

8 THE WITNESS: -- one way or  
9 the other.

10 BY MR. EPPICH:

11 Q. Are you planning to offer  
12 any opinions about whether or not any of  
13 the defendants diverted prescription  
14 opioids in this litigation?

15 A. No.

16 Q. I'd like to turn back to  
17 Page 56 of your report. Page 56 is the  
18 start of Section 9, transaction analysis,  
19 you'll recall.

20 I'd like to return to the --  
21 the five methodologies that you implement  
22 to identify what you call flagged orders.  
23 Okay?

24 A. Yes.

1           Q.     You testified earlier that  
2     the plaintiffs' counsel provided these  
3     five methodologies for identifying  
4     flagged transactions to you, correct?

5           A.     Yes.

6           Q.     You didn't come up with the  
7     five methodologies yourself?

8           A.     No.

9           Q.     You have no opinion of -- on  
10    whether any of the five methodologies is  
11    appropriate for evaluating whether or  
12    not -- or, excuse me. Let me strike  
13    that.

14                   You have no opinion on  
15    whether any of the five methodologies are  
16    appropriate for identifying what you call  
17    flagged transactions, correct?

18          A.     Correct.

19          Q.     There may be other  
20    appropriate methodologies for -- for --  
21    let me strike that.

22                   You'd agree there may be  
23    other appropriate methodologies for  
24    flagging suspicious orders, correct?

1     that the defendants produced in this case  
2     in discovery.  It's a little bit  
3     different than what you said, but it's  
4     close.

5             Q.     So to restate, you'd agree  
6     that the ARCOS data that the DEA provided  
7     to you was accurate?

8             A.     That's certainly how I  
9     shorthanded in a sentence or two a couple  
10    of times in the report.  But if you read  
11    the entire report what I'm saying is that  
12    the ARCOS data that I received after  
13    making some corrections on allowing for  
14    some periods where they don't match  
15    perfectly, match the defendant  
16    transaction data produced in discovery  
17    quite closely.

18            Q.     You're aware that only the  
19    DEA has access to ARCOS data?

20            A.     I don't know if that's true.  
21    I don't know one way or another.

22            Q.     Are you aware that  
23    distributors could not see the ARCOS data  
24    of any other distributor?

1           A.       I don't know if that's true.  
2       I don't know one way or the other.

3           Q.       Do you plan on offering any  
4       opinions about whether or not a  
5       distributor has access to ARCOS data?

6                   MR. MOUGEY:  Objection.

7                   THE WITNESS:  Not other than  
8               to their own data, I don't have an  
9               opinion one way or the other.

10       BY MR. EPPICH:

11           Q.       Do your methodologies comply  
12       with the Controlled Substance Act and the  
13       applicable DEA regulations?

14           A.       I'm not familiar with the  
15       details of the Controlled Substance Act  
16       or the applicable regulations.  But there  
17       seems to be a disconnect between whatever  
18       is in those documents and what I've  
19       described here as my methodologies.

20           Q.       What is that disconnect?

21           A.       Well, by a disconnect, I  
22       mean in layman's terms they are kind of  
23       apples and oranges.  I've described in  
24       the reports the methodologies that I

1 applied and the results of applying those  
2 methodologies to the ARCOS data for  
3 Cuyahoga and Summit, supplemented with  
4 the defendants' transaction data  
5 produced.

6 I'm not sure what -- I don't  
7 understand the applicability of the  
8 Controlled Substances Act or the  
9 regulations they're under to the  
10 calculations that I've done. So I don't  
11 know if it's consistent or not  
12 consistent. I don't see the connection  
13 between them.

14 Q. And do you intend to offer  
15 any opinions in this case about whether  
16 or not your methodologies comply with the  
17 Controlled Substances Act or its  
18 regulations?

19 MR. MOUGEY: Objection.

20 THE WITNESS: Not as I sit  
21 here. I don't see the connection,  
22 as I just said.

23 BY MR. EPPICH:

24 Q. If we can look at Page 56 of



1 your report, sir, at Paragraph 132. This  
2 has been the subject of some questioning  
3 earlier today.

4 And I'm referring to the  
5 assumption that is stated in  
6 Paragraph 132, where you write, "In this  
7 approach" -- and I think we've  
8 established that Paragraph 132 is  
9 applying to all five methodologies.

10 "In" -- "in this approach  
11 and the others implemented below, I have  
12 been asked by counsel to assume that the  
13 distributor did not effectively  
14 investigate the flagged transactions, and  
15 so every subsequent transaction of that  
16 drug code is also flagged because the  
17 distributor had an unfulfilled obligation  
18 to detect and investigate the first  
19 flagged transaction."

20 Did I read that correctly?

21 A. Yes.

22 Q. What did you do to evaluate  
23 the validity of this assumption?

24 A. Nothing. It was just an

1 well, as I explained earlier, that I have  
2 interpolated between the 1997 and the  
3 2018 levels for the reasons I did. For  
4 no other reasons. And that includes for  
5 no other consideration beyond the actual  
6 levels of 2018. However, they may or may  
7 not be impacted by the quotas you're  
8 describing.

9 Q. You don't know as you sit  
10 here today, correct?

11 A. I don't know anything about  
12 the quotas, as I said now two or three  
13 times. They did not impact any of my  
14 calculations including in this section.

15 Q. Your report classifies  
16 shipments of prescription opioids as  
17 excessive, correct?

18 A. Relative to the benchmarks  
19 in Section 10, that's correct.

20 Q. Which of these shipments  
21 should distributors have refused to ship  
22 to their pharmacy customers?

23 A. In Section 10?

24 Q. Yes, sir.

1           A.       Section 10 doesn't deal with  
2   individual shipments from distributors to  
3   pharmacies. It's at a higher, more macro  
4   level, describing the shipments into  
5   Ohio, and into Cuyahoga and Summit, and  
6   how those exceed the two example  
7   baselines that I created.

8           Q.       Yes. And earlier you -- you  
9   explained what the -- what you meant by  
10   excessive shipments. And so I'm asking  
11   you, of these excessive shipments, which  
12   of them should distributors have not  
13   shipped to pharmacies?

14          A.       I don't have an opinion one  
15   way or another beyond what's expressed in  
16   Section 10 on that topic.

17          Q.       Were any of what you  
18   called -- call excessive shipments  
19   diverted?

20          A.       I don't know.

21          Q.       You can't point to any of  
22   your excessive shipments that were  
23   diverted?

24                   MR. MOUGEY: Objection.

1           Outside the scope.

2                   THE WITNESS: And it's just  
3           mischaracterizing what I did in  
4           Section 10. I'm not identifying  
5           individual transactions in  
6           Section 10.

7                   I'm just saying at a macro  
8           level, the amount of MME per  
9           capita shipped into Cuyahoga and  
10          Summit went up by a factor of  
11          eight or ten, and then came back  
12          down by nearly 50 percent, and  
13          I've explained how that dramatic  
14          increase exceeds some gradual  
15          growth from the earlier levels to  
16          the later levels.

17 BY MR. EPPICH:

18           Q.     Do you plan to offer any  
19          opinions in this case as to whether or  
20          not the excessive shipments that are  
21          represented in your report in Section 10  
22          were diverted?

23           A.     No.

24           Q.     Your 1997 baseline, you

1 recall testifying about that earlier  
2 today?

3 A. Yes.

4 Q. Your 1997 baseline assumes  
5 all prescriptions were necessary?

6 A. Yes.

7 Q. Your 1997 baseline does not  
8 consider any additional factors beyond  
9 the number of prescriptions that year,  
10 correct?

11 A. There's a whole lot of stuff  
12 it doesn't consider. Like car sales, I  
13 don't know what it is that you're  
14 referring to. I don't have any idea what  
15 you might be referring to.

16 It doesn't include anything  
17 except the MME per capita shipped in  
18 1997.

19 I apologize. I don't mean  
20 to get snippy. I'm getting hungry. I  
21 need a Snickers bar.

22 Q. Would you like to take a  
23 break, sir?

24 A. Whenever is a convenient

1     you're espousing in your report, fair?

2             A.     Correct. I don't know about  
3     espousing, but presenting. I'm not  
4     advocating for one or the other.

5             Q.     That's a fair clarification.

6                     There was a reference  
7     earlier today about DEA annual quotas.  
8     Do you remember a couple of questions  
9     about DEA quotas?

10            A.     Yes.

11            Q.     Are you familiar with how  
12     DEA quotas for prescription opioid  
13     medications are set?

14            A.     No.

15            Q.     Do you know the extent to  
16     which annual quotas set by the DEA for  
17     the use of prescription opioid  
18     medications has varied over time?

19            A.     No.

20            Q.     Do you have any knowledge  
21     about the ways in which guidelines to the  
22     medical community for the appropriate use  
23     of prescription opioid medications has  
24     changed over time?

1           A.     No.

2           Q.     I just wanted to make sure I  
3     understood this very clearly. Are you in  
4     any way relying on the opinions of, or  
5     information from any consultants or  
6     experts that the lawyers have retained in  
7     this litigation for purposes of informing  
8     your own opinions and your own report?

9           A.     No.

10          Q.     There were a couple of  
11     questions earlier today about diversion.

12          A.     Yes.

13          Q.     Do you remember that?

14                     I just wanted to make sure I  
15     understood, that you do not have any  
16     opinions about the physical security that  
17     any distributor uses or has used to  
18     prevent diversion of controlled  
19     substances including prescription opioid  
20     medications, true?

21          A.     True.

22          Q.     And you have not identified  
23     any specific instances of diversion based  
24     on your review of any of the materials

1     that you've looked at in this lawsuit,  
2     correct?

3             A.     Correct. I haven't made any  
4     attempt to do that.

5             Q.     One of the things that I  
6     understand you did, pursuant to the  
7     lawyers' request, was to compare  
8     individual defendants' transactional data  
9     with the information that you saw in the  
10    DEA's ARCOS database; is that right?

11            A.     Yes.

12            Q.     You tried to match it up?

13            A.     Yes.

14            Q.     And in Cardinal's case, you  
15    concluded that the match had nearly  
16    perfect overlap. Do you remember writing  
17    that in your report?

18            A.     With the two exceptions that  
19    I identified in the report specifically  
20    for Cardinal. So maybe that wording  
21    isn't particularly good, because where  
22    they do not overlap is biggest for  
23    Cardinal Health compared to any of the  
24    other defendants. You've got the 610,000



1     duplicates for Cardinal Health, and then  
2     you've got three weeks where there are no  
3     transactions at all in Cuyahoga and  
4     Summit for Cardinal Health.

5                     So separating those two  
6     periods, the rest of the data lines up  
7     really well for Cardinal.

8             Q.     You're referring to an  
9     exception in the data from March 2008?  
10    Is that what you're talking about?

11            A.     That's part of it.

12            Q.     Well, you write on Page 34  
13    of your report -- is that where you're  
14    looking right now?

15            A.     Yes.

16            Q.     You wrote, "Virtually all of  
17    the transactions in Cardinal Health's  
18    data and the transactions in the ARCOS  
19    data match, with the exception of  
20    March 2008."

21                     Do you see that?

22            A.     Yes.

23            Q.     Did I read that correctly?

24            A.     Correct. But you have to